



THE CORPORATION OF THE CITY OF WATERLOO

By-Law No. 2019-026

**By-law to establish policies for the procurement of
Goods and Services by the City**

June 24, 2019

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THE CORPORATION OF THE CITY OF WATERLOO

By-Law No. 2019-

By-law to establish policies for the procurement of Goods and Services by the City

WHEREAS section 270(1)(3) of the *Municipal Act 2001*, S.O. 2001, c. 25, as amended (the “Act”), requires all municipalities to adopt and maintain a policy with respect to the procurement of Goods and Services;

AND WHEREAS The Corporation of the City of Waterloo (the “City”) is committed to ensuring its procurement decisions are fair, open, transparent and non-discriminatory;

AND WHEREAS effective planning, monitoring and control of procurement is essential for maintaining public trust and confidence;

AND WHEREAS purchases made by the City should reflect best value for the City, protect the City’s financial interests and encourage competitive Bidding;

AND WHEREAS effective Contractor performance is critical for the success of City projects. Poor workmanship, unnecessary project delays and unsafe work practices will not be accepted.

AND WHEREAS the City should be prepared to manage extraordinary circumstances from time to time, and that such circumstances may require immediate procurement decisions that are necessary to prevent or alleviate serious delay, a threat to public health, safety or welfare, the disruption of essential services or damage to public property or to respond to an emergency or as required under the provincial *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, as amended;

AND WHEREAS effective planning, monitoring and control of Broader Public Sector procurement is essential for maintaining public trust and confidence;

NOW THEREFORE the Council of The Corporation of the City of Waterloo enacts as follows:

1. PURPOSES, GOALS, AND OBJECTIVES

- 1.1 The purposes, goals, and objectives of this by-law and of each of the methods of procurement authorized herein are:

- 1.1.1 To establish standard rules governing the procurement of Goods and Services by City staff;
- 1.1.2 To obtain the best value for the City when procuring Goods and Services;
- 1.1.3 To ensure consistency and fairness amongst Bidders during the procurement process;
- 1.1.4 To the extent possible, ensure openness, accountability and transparency while protecting the financial best interests of the City;
- 1.1.5 To avoid conflicts between the interests of the City and those of the City's employees and members of Council;
- 1.1.6 To specify roles and responsibilities of individuals, divisions and departments through the procurement process;
- 1.1.7 To promote respect for human rights, international and inter-provincial trade treaties or agreements and fair labour practices;
- 1.1.8 To encourage, whenever possible, the procurement of Goods and Services with due regard to the conservation of a natural environment, and that adopt a pro-active approach to climate change;
- 1.1.9 To promote and incorporate the requirements of the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, as amended (the "AODA") in procurement activities of the City as well as any requirements contained in other legislation (either provincial or federal) which may impact the procurement activities of the City;
- 1.1.10 To support effective business planning such that Goods and Services will only be acquired after consideration of need, alternatives, timing and appropriate life cycle management issues;
- 1.1.11 To mitigate risk in future contracts through monitoring, measuring and recording Contractor performance, and,
- 1.1.12 To comply with the requirements of the Act.

2. APPLICATION OF BY-LAW

- 2.1 This by-law shall apply to purchases by staff in all departments of the City, including Committees of the City with designated budgets who must coordinate with City staff to facilitate any purchase of Goods or Services.
 - 2.1.1 Notwithstanding section 2.1, this by-law shall not apply:
 - 2.1.1.1 to the purchase of those Goods and Services set out in **Schedule "A"**; and
 - 2.1.1.2 subject to Section 19, where the City is engaged in Co-operative Purchasing and where another government agency or member of the Broader Public Sector is purchasing Goods and Services on the City's behalf.

- 2.2 All purchases of Goods and Services shall be compliant with this by-law and with the City's Employee Code of Conduct and Ethics Policy.
- 2.3 No contract for Goods and Services shall be structured in such a manner so as to circumvent any intent or thresholds of this by-law.
- 2.4 No purchase shall be processed for personal items of direct benefit to employees of the City or any member of Council except where permitted by this by-law, City policy or under the auspices of a City-sponsored employee program.
- 2.5 No Goods or Services shall be purchased from an employee of the City, except where permitted under this by-law.

3. DEFINITIONS

- 3.1 In this by-law:
 - 3.1.1 "Authority Limit" means the maximum monetary value delegated to specific staff positions or Council.
 - 3.1.2 "Bid" includes a Bid, proposal, quotation and tender;
 - 3.1.3 "Bid Bond" means a written guaranty from a third party guarantor submitted to a principal (client or customer) by a Contractor (Bidder) along with a Bid which insures against non-performance of the Bid document's requirements on the acceptance of a Bid;
 - 3.1.4 "Bid Irregularity" means a deviation from the requirements of a call for Bid;
 - 3.1.5 "Bidder" means one who submits a response to a call for Bid and includes those submitting a response to a call for proposal, quotation or tender;
 - 3.1.6 "Change Order" means a change to an authorized commitment with a corresponding change in value of a contract or Purchase Order, documented through a change order, contract amendment or similar document.
 - 3.1.7 "Chief Administrative Officer" or "CAO" means the Chief Administrative Officer of the City or his or her designate;
 - 3.1.8 "Chief Financial Officer" or "CFO" means the Chief Financial Officer and Treasurer of the City or his or her designate;
 - 3.1.9 "City Solicitor" means the Director of Legal Services, or his or her designate, or outside legal counsel as determined by the Director of Legal Services from time to time;
 - 3.1.10 "City" means The Corporation of the City of Waterloo;
 - 3.1.11 "Commissioner" means a person with administrative responsibilities for a department of the City, or his or her designate;
 - 3.1.12 "Commitment Approval" means the authorization to use approved budgeted funds up to an allowable Authority Limit but does not include the authority to sign any contract, except where permitted by an Execution By-Law or other City policy;

- 3.1.13 "Contractor" means a person or firm having a contract with the City to furnish Goods and/or Services;
- 3.1.14 "Construction" means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United National Provisional Central Product Classification;
- 3.1.15 "Consultant" means a person or firm that provides Consulting Services;
- 3.1.16 "Consulting Services" means the provision of expertise or strategic advice that is presented for consideration and decision-making;
- 3.1.17 "Co-operative Purchasing" means the process by which one public body or buying group on behalf of one or more public bodies undertake a procurement process in order to obtain the benefits of volume purchases and administrative efficiency.; "Corporate Management Team" or "CMT" means the group consisting of the CAO and the Commissioners of all departments which, for greater certainty, includes the CFO;
- 3.1.18 "Council" means the Council of the City;
- 3.1.19 "Department" means a collection of divisions under the control of a Commissioner of the City;
- 3.1.20 "Director" means a Director, the City Clerk or a Deputy Fire Chief of the City, or his or her designate, who is responsible for a specific division;
- 3.1.21 "Director of Procurement" means the Director of Fleet and Procurement of the City, or his or her designate, who is under the general direction of the Chief Financial Officer;
- 3.1.22 "Division" means a part of a department of the City;
- 3.1.23 "Donation" means a cash and/or in-kind contribution made to the City with no reciprocal commercial benefit expected or required from the City. Donations do not involve a business relationship and are distinct from sponsorship and/or advertising initiatives;
- 3.1.24 "Emergency" means a situation or threat or an impending situation which may affect the environment, life, safety, health or welfare of the general public or the property of the residents of the City that requires immediate repair or replacement of equipment, services, or facilities in order to prevent or mitigate the loss or impairment of life, health, essential services or property within the City.
- 3.1.25 "Goods" means personal property (including the costs of installing, operating, maintaining or manufacturing such personal property) and includes raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract;
- 3.1.26 "Goods and Services" "Goods or Services" means all Goods and/or services including Construction Services and Consulting Services;
- 3.1.27 "In-House Work" is where the provision of Goods and/or Services will be completed entirely by City staff;

- 3.1.28 "Limited Procurement" means a competitive or non-competitive procurement method where one or more suppliers of the City's choice are invited to Bid.
- 3.1.29 "Manager" means a Manager or his or her designate, who is responsible for a specific Section;
- 3.1.30 "Multi-Use List" means a list of Contractors that the City has determined satisfy the conditions for participation in that list, and that the City intends to use more than once;
- 3.1.31 "Non-Competitive Procurement" means a purchase negotiated directly from one supplier
- 3.1.32 "Open Competitive Procurement," means a competitive solicitation method, where a notice of intended procurement is advertised to the public, giving all suppliers an equal opportunity to submit a Bid in response to the solicitation.
- 3.1.33 "Prequalified Contractor"" means a Contractor who has submitted a response to an advertised request for prequalification and has been determined to have met the minimum disclosed criteria and standards for technical qualifications and professional competence, and has the necessary equipment, facilities and experience for specific future solicitations;
- 3.1.34 "Purchasing Card" means a card provided by the City to duly authorized City staff to make purchases in compliance with the Purchasing Card Policy;
- 3.1.35 "Procurement Division" means the division of the City managed by the Director of Procurement";
- 3.1.36 "Purchase Order" means a contractual agreement with a Contractor that specifies payment terms, delivery dates, item identification, quantities, freight terms and all other obligations and conditions;
- 3.1.37 "Section" means a part of a Division of the City;
- 3.1.38 "Standing Arrangement" means an arrangement with a Contractor or Contractors under which the City may purchase Goods and/or Services from the Contractor(s) over a period specified in the arrangement. The arrangement includes all terms applicable to the procurement, such as the cost of the Goods and Service and delivery requirements;
- 3.1.39 "Surplus Property" means items no longer having a use to the City and shall include furniture, vehicles, equipment, supplies, and other Goods or materials, which are deemed surplus or which have become obsolete, worn out, or otherwise incapable of use.
- 3.2 To establish the definition of any other purchasing term not herein included, reference shall be made to the latest edition of the National Institute of Governmental Purchasing Inc. (NIGP) Public Procurement Dictionary of Terms.
- 3.3 All monetary amounts outlined in this by-law shall, unless otherwise stated, exclude all applicable taxes.
- 3.4 The monetary thresholds outlined in **Schedule "C"** shall be consistent with the City's estimated or budgeted amounts for the specific procurement or project, not the amount actually Bid.

4. INTERPRETATION

- 4.1 Headings contained in this by-law are for reference only.
- 4.2 **Schedule “A” - Purchasing Exemptions** is incorporated into and forms a part of this by-law.
- 4.3 **Schedule “B” - Chart of Bid Irregularities or Non-Compliance** is incorporated into and forms a part of this by-law.
- 4.4 **Schedule “C” - Thresholds of Procurement Methods** is incorporated into and forms a part of this by-law.

5. RESPONSIBILITIES AND AUTHORITY

- 5.1 Director of Procurement – The Director of Procurement is responsible for:
 - 5.1.1 Providing procurement advice and related services including the necessary forms, contracts and Bid document templates that may be required by departments, the CAO and Council for the purposes of fulfilling the procurement needs of the City;
 - 5.1.2 Facilitating all aspects of calls for Bids including opening and ensuring compliance with the terms and conditions of the call for Bid;
 - 5.1.3 Ensuring compliance with this by-law and associated policies and procedures and reporting non-compliance, in writing, to the appropriate Director, Commissioner or CAO, where warranted;
 - 5.1.4 Approve, in consultation with the Director of Legal Services, by-law exception requests made pursuant to section 15 herein;
 - 5.1.5 The standardization of Goods and Services in conjunction with Divisions, where appropriate and feasible;
 - 5.1.6 The consolidation of the procurement of all similar Goods and Services where appropriate and feasible;
 - 5.1.7 Assisting Divisions with the disposal of Surplus Property;
 - 5.1.8 Ensuring that there is City representation in respect of co-operative purchasing initiatives; and,
 - 5.1.9 Complying with the purposes, goals, and objectives of this by-law.

5.2 **Commissioners, Directors and Managers** – Commissioners, Directors and Managers are responsible for ensuring that:

- 5.2.1 all procurement within their respective Departments or Divisions or Sections is in compliance with this by-law and any associated policies and procedures;
- 5.2.2 no procurement, except for Emergency purchases, shall be contrary to Council's approved budget or any specific direction from the CAO, CFO or Council, unless otherwise authorized by a Council-approved policy;
- 5.2.3 payments to Contractors are approved for processing within the times set out in the contract, provided the Contractor has met all the conditions of the contract; and,
- 5.2.4 all Goods and Services contracted for have been received and accepted by the City and maintain appropriate documentation reflecting any approved changes in the terms and conditions of a contract.

5.3 **City Solicitor**

- 5.3.1 Create template contracts and updates as required;
- 5.3.2 Prepare amendments to contracts;
- 5.3.3 Prepare negotiated contracts for signature;
- 5.3.4 Review and advise on interpretation of policies and legislation in relation to the Purchasing By-Law;
- 5.3.5 Provide legal advice and opinions as required in relation to legal issues arising during or as a result of purchasing activities;
- 5.3.6 Review and provide legal advice and opinion regarding large, complex or unique purchases.

5.4 **CAO** – The CAO is responsible for ensuring that all City staff complies with this by-law.

6. **PRESCRIBED COUNCIL APPROVAL**

6.1 The following contract awards shall be subject to Council approval:

- 6.1.1 any contract prescribed by statute to be made by Council;
- 6.1.2 any contract that includes third party financing as part of the acquisition of Goods and Services;
- 6.1.3 any contract where this by-law is being waived;

- 6.1.4 any contract where Council has expressly directed staff to report prior to an award;
- 6.1.5 any contract where authority to approve has not been expressly delegated;
- 6.1.6 any contract where a submission in response to a call for Bid contains an irregularity not resolved by **Schedule “B”** of this by-law and which was not able to be otherwise resolved by the Procurement Division; or,
- 6.1.7 any contract through a Non-Competitive Procurement process, except where permitted in Schedule C and Section 15 of this by-law.
- 6.2 Council may waive, by resolution, the application of any part of this by-law in respect of any given procurement.

7. PURCHASING APPROVALS

- 7.1 All Commitment Approvals and subsequent execution of contract documents, including contract changes resulting in increases in contract value must be approved in accordance with the City’s By-Law to Delegate Authority to Execute Documents.

8. PROCUREMENT PROCESS

- 8.1 Procurements shall be undertaken in compliance with the following requirements:
 - 8.1.1 each call for Bid shall be conducted in a fair, open, equitable, consistent, non-discriminatory and professional manner; and
 - 8.1.2 the call for Bid document shall be publicly advertised, where required, in accordance with **Schedule “C”** to maximize the response potential to the call for Bid.

9. REQUIREMENT FOR APPROVED FUNDS

- 9.1 The authority to procure Goods and Services or award a contract is subject to the identification and availability of funds in appropriate accounts within Council's approved budget.
- 9.2 All purchases which are outside the Council-approved budget shall be subject to the appropriate City budget policy.

10. STANDARD PROCUREMENT METHODS

- 10.1 Unless otherwise specified in this by-law, Goods and Services shall be purchased or procured in accordance with the methods described in this section and in accordance with **Schedule “C”** of this by-law.

10.1.1 **REQUEST FOR INFORMATION (“RFI”)**

- 10.1.1.1 A RFI may be used to determine the interest of the marketplace to provide Goods or Services, which the City is contemplating purchasing.
- 10.1.1.2 A RFI may be used as a general market research tool to determine what Goods and Services are available and if they meet the City’s business or operational requirements or acquisition strategies.
- 10.1.1.3 A RFI may request publicly available commodity cost details for the purpose of budget planning or developing a future call for Bid.
- 10.1.1.4 A RFI should not create a contractual obligation between the City and the interested party.

10.1.2 **REQUEST FOR PREQUALIFICATION (“RFPQ”)**

- 10.1.2.1 A submission in response to a RFPQ may be made a specific pre-condition of any other procurement procedure utilized by the City.
- 10.1.2.2 A RFPQ may be conducted for any Goods or Services to determine qualified Bidders for a potential subsequent procurement process.
- 10.1.2.3 A RFPQ should not create a contractual obligation between the City and the interested party.
- 10.1.2.4 A RFPQ shall be publicly advertised, as outlined in **Schedule “C”** of this by-law, in a manner determined by the Director of Procurement or as outlined in a supplementary policy.
- 10.1.2.5 A RFPQ that is used to create a Multi-Use List can only be valid for three (3) years or less without having to publish a new RFPQ.
- 10.1.2.6 Notwithstanding any other provision of this by-law, where there has been a RFPQ, no public advertising shall be required for a subsequent RFQ, RFT or RFP.

10.1.3 **LOW COST PURCHASE (“LCP”)**

- 10.1.3.1 A LCP may be conducted for the procurement of Goods and Services having a purchase value up to the limit stated in **Schedule “C”** of this by-law.
- 10.1.3.2 A LCP may be made utilizing a purchase order, petty cash, a vendor offered charge account or purchase card or other similar method.
- 10.1.3.3 A Manager or Director may authorize specific individuals to make LCPs and set monetary limits to that authority, in accordance **Schedule “C”** of this by-law.

10.1.4 **REQUEST FOR QUOTATION (“RFQ”)**

- 10.1.4.1 A RFQ is an invitation for a price, based on the terms and description of Goods and Services described in the RFQ. In the RFQ the scope of work is well defined and award is based on price

only after all mandatory requirements have been met as defined in the RFQ.

- 10.1.4.2 A RFQ may be invitational or publicly advertised, as outlined in **Schedule “C”** of this by-law, in a manner determined by the Director of Procurement or as outlined in a supplementary policy.

10.1.5 **REQUEST FOR TENDER (“RFT”)**

- 10.1.5.1 A RFT is an invitation for a Bid, based on the terms, and description of Goods and Services described in the RFT. In the RFT the scope of work is well defined and award is based on price only after all mandatory requirements have been met as defined in the RFT. The RFT is used for more complex requirements than those used in the RFQ.

- 10.1.5.2 A RFT shall be invitational or publicly advertised as outlined in **Schedule “C”** of this by-law, in a manner determined by the Director of Procurement or as outlined in a supplementary policy.

10.1.6 **REQUEST FOR PROPOSAL (“RFP”)**

- 10.1.6.1 A RFP is an invitation to potential Contractors to submit a proposal for the purpose of an award. In the RFP the deliverables may not be well defined but represented by an end result/objective. Bidders are required to submit their approach to a general description of services outlining the objective expected. Pre-determined evaluation criterion is established and Bids are evaluated to determine a highest scoring Contractor based on the best-rated score from both technical criteria and price.

- 10.1.6.2 A RFP shall be invitational or publicly advertised, as outlined in **Schedule “C”** of this by-law, in a manner set out by the Director of Procurement or as outlined in a supplementary policy.

- 10.1.6.3 A RFP may be used in situations where any of the following apply:

10.1.6.3.1 the selection of the successful Bidder depends upon the effectiveness of the proposed solution based on several stated criteria outlined in the proposal;

10.1.6.3.2 where negotiation with one or more Bidders may be required with respect to any aspect of the contract;

10.1.6.3.3 the precise Goods or Services (or the applicable specifications) are unknown or are not definable; or,

10.1.6.3.4 the services required are Consulting Services.

11. ALTERNATE PROCUREMENT METHODS

11.1 UNSOLICITED SUBMISSIONS, PROPOSALS AND OFFERS

- 11.1.1 All unsolicited submissions, proposals and offers received by the City if being considered shall be directed to the Director of Procurement for review with the Director or Commissioner of the appropriate division or department for their review.

12. NEGOTIATION

- 12.1 Negotiation, conducted under the direction of the Director of Procurement and/or the Procurement Division, may be used for the procurement of Goods and Services or for any contract when one or more of the following criteria apply:
 - 12.1.1 due to abnormal market conditions, the Goods and Services required are in short supply or market price fluctuations or instability exists;
 - 12.1.2 where only one Bid is received and it exceeds the amount budgeted for the procurement;
 - 12.1.3 where extending the existing contract was provided for in the original Bid document;
 - 12.1.4 where a Bid document expressly allow for negotiations to occur;
 - 12.1.5 where extraordinary circumstances exist, as determined by the Director of Procurement;
 - 12.1.6 where Council has authorized negotiation; or,
 - 12.1.7 where all submitted Bids are non-compliant with the terms of the call for Bid.

13. EMERGENCY PURCHASES

- 13.1 Notwithstanding any of the provisions of this by-law, Goods and Services may be immediately purchased during an Emergency, as determined by any of the CAO, CFO, the Director of Procurement, or a Commissioner, which includes a circumstance where there is a threat to any of the following:
 - 13.1.1 public health;
 - 13.1.2 the maintenance of essential services or to prevent the disruption of essential services;
 - 13.1.3 the welfare of persons or of public property; or,
 - 13.1.4 the security of the City's interests.
- 13.2 Notwithstanding any of the provisions of this by-law, any of the CAO, CFO, the Director of Procurement, or a Commissioner, shall have the necessary authority to

secure any Goods and Services required, in an efficient, expeditious manner for all Emergency purchases using a Purchasing Card or Purchase Order. In the case of an after-hours emergency, a Purchase Order will be issued the next regular business day.

- 13.3 If the value of the Emergency purchase exceeds the value permitting Limited Procurements as outlined in Schedule "C", as soon as is practicable after an emergency purchase has been made, the appropriate Director or Commissioner shall forward a report to Council outlining:

- 13.3.1 the nature of the Emergency;
- 13.3.2 why the Emergency purchase was necessary;
- 13.3.3 the method by which the Emergency purchase was conducted; and,
- 13.3.4 the total cost of the Emergency purchase, including any budgetary impacts.

14. NON-COMPETITIVE PROCUREMENTS

- 14.1 Unless allowable pursuant to **Schedule "C"** of this by-law, a Director may only facilitate and negotiate a Non-Competitive Procurement if:

- 14.1.1 The circumstances for the Non-Competitive Procurement meet one of the allowable exceptions in 14.2 below or as may be permitted under Article 513 of the Canadian Free Trade Agreement;
- 14.1.2 A rationale of how the request represents an allowable exception has been approved by the Director of Procurement, in consultation with the Director of Legal Services, or if a request for an escalation is made, approved by the Corporate Management Team; and
- 14.1.3 Proper approvals in accordance with Authority Limits have been obtained.

- 14.2 Non-Competitive Procurements are permitted for Goods or Services of any contract value without the competitive Bid process in the following circumstances (allowable exceptions):

- 14.2.1 No compliant Bids were submitted or no Bidders responded to or met conditions for participation under a Bid or request for pre-qualification, or submitted Bids were collusive;
- 14.2.2 If the Goods and/or Services can be supplied only by a particular supplier and no reasonable alternative or substitute Goods or Services exist for any of the following reasons:
 - 14.2.2.1 the requirement is for a work of art;
 - 14.2.2.2 the protection of patents, copyrights, or other exclusive rights;
 - 14.2.2.3 due to an absence of competition for technical reasons;
 - 14.2.2.4 the Supply of goods or services is controlled by a supplier that is a statutory monopoly;

- 14.2.2.5 to ensure compatibility with existing Goods, or to maintain specialized goods that must be maintained by the manufacturer of those Goods or its representative;
 - 14.2.2.6 work is to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work; or
 - 14.2.2.7 work is to be performed on a leased building or related property, or portions thereof that may be performed only by the lessor.
- 14.2.3 For additional deliveries by the original supplier of Goods and/or Services that were not included in the initial procurement, if a change of supplier for such additional Goods or Services:
- 14.2.3.1 cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and
 - 14.2.3.2 would cause significant inconvenience or substantial duplication of costs for the City;
- 14.2.4 If strictly necessary, and for reasons of urgency brought about by events unforeseeable by the City, the Goods or Services could not be obtained in time using an open Bid process;
- 14.2.5 For the purchase of Goods on a commodity market;
- 14.2.6 If the City procures a prototype or a first good or service that is developed in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first Good or Service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the Good or Service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- 14.2.7 If a contract is awarded to the winner of a design contest, provided that:
- 14.2.7.1 The contest has been organized in a manner that is consistent with the advertising requirements set out in Schedule A; and
 - 14.2.7.2 The participants are judged by an independent jury with a view to a design contract being awarded to a winner.
- 14.2.8 For the purchase of Goods under exceptionally advantageous circumstances such as liquidation, bankruptcy or receivership, but not for routine purchases from regular Contractors;
- 14.2.9 For procurements that target poverty reduction for disadvantaged natural persons if the value of the procurement is below \$200,000; or
- 14.2.10 If Goods or Services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government

confidentiality, result in the waiver of privilege, cause economic disruption or otherwise be contrary to the public interest.

15. CONTRACTOR PERFORMANCE MANAGEMENT

- 15.1 The City may, for any contract created pursuant to this By-law, undertake performance evaluation during or after completion of the contract.
- 15.2 Documented performance on any City Contract may:
 - 15.2.1 Determine the eligibility of a Contractor or Consultant to continue to provide Goods, Services or Consulting Services to the City;
 - 15.2.2 Determine the eligibility of a Contractor or Consultant to participate in future Bid opportunities;
 - 15.2.3 Be considered as part of the evaluation criteria for any future Bid opportunities.
- 15.3 Performance evaluations and corrective actions will be conducted in an appropriate and consistent manner, in accordance with the City's Supplier Performance Evaluation Program (the "Program").
- 15.4 The Director Procurement is responsible:
 - 15.4.1 for the implementation and oversight of the Program, including placing any Contractor or Consultant on probation as permitted under the Program;
 - 15.4.2 for maintaining a list of Contractors or Consultants status under the Program;
 - 15.4.3 to ensure that all Bidders have access to the Program and performance evaluation criteria; and
 - 15.4.4 to ensure reference to the Program is detailed in all Bids that are subject to the Program.
- 15.5 Prior to issuing a formal notice of suspension as permitted under the Program, the Director of Procurement will consult with the City Solicitor.
- 15.6 Commissioners, Directors and Managers are responsible to ensure that their Departments, Divisions and Sections monitor and document a Contractor's performance and comply with their obligations under and the requirements of the Program.

16. LOCAL OR GEOGRAPHICAL PREFERENCE

- 16.1 The City shall comply with the *Discriminatory Business Practices Act*, R.S.O. 1990, c. D.12, as amended.

17. BID ADMINISTRATION

17.1 BID IRREGULARITIES

- 17.1.1 Where a Bid is received that includes an irregularity, the City shall follow the protocol as appropriate for the particular irregularity, as outlined in **Schedule "B"**.

17.2 ONLY ONE BID RECEIVED

- 17.2.1 In the event only one Bid is received in response to a competitive Bid, the Director of Procurement may return the unopened Bid to the Bidder. In returning the unopened Bid, the Director of Procurement shall inform the Bidder that the City may be re-issuing the competitive Bid at a later date.
- 17.2.2 In the event that only one Bid is received in response to a request for competitive Bid, the Bid may be opened and evaluated.
- 17.2.2.1 If the Bid does not exceed the amount budgeted, it may be awarded in accordance with this by-law.
- 17.2.2.2 Where the Bid exceeds the amount budgeted for the procurement, negotiations may be conducted with the only Bidder, in accordance with this by-law.

17.3 EXCLUSION OF BIDDERS

- 17.3.1 If there is supporting evidence, the City may exclude all Bids submitted by a Bidder on grounds such as:
- 17.3.1.1 that Bidder is engaged in a legal action or there is a potential of legal action with the City unless waived by the Director of Legal Services;
- 17.3.1.2 bankruptcy or insolvency;
- 17.3.1.3 false declarations;
- 17.3.1.4 significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- 17.3.1.5 final judgments in respect of serious crimes or other serious offences;
- 17.3.1.6 professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Bidder; and
- 17.3.1.7 failure to pay taxes.

18. CO-OPERATIVE PURCHASING

- 18.1 The City may participate with other government agencies or members of the Broader Public Sector in co-operative purchasing initiatives where it is in the best interests of the City to do so.
- 18.2 The purchasing policies of the originating co-operative (or lead agency) shall form the basis of accepted policy and procedure when participating in, or calling, co-operative Bids and this by-law shall be otherwise waived. The City will review the originating co-operatives' purchasing policies before entering a co-operative purchasing arrangement.

19. IN-HOUSE WORK

- 19.1 For any studies, assessments, evaluations, renovations, surveys, construction and any other work involving City-owned lands, infrastructure and facilities the City reserves the right, to conduct such activities using its own staff and resources.

20. CONSULTING SERVICES

20.1 GENERAL

- 20.1.1 Consulting Services over one hundred thousand dollars (\$100,000) shall be procured by RFP, Multi-Use List or Standing Arrangement, unless a Non-Competitive Procurement process is approved in accordance with Section 14.
- 20.1.2 When evaluating a RFP for consulting services over one hundred thousand dollars (\$100,000), the criteria of "price" shall be scored at least thirty five percent (35%), unless the criteria of price is negotiated in accordance with Section 13.1.4.
- 20.1.3 Notwithstanding Section 20.1.2, the City may include as part of its evaluation criteria the requirement that a Bidder meet a defined minimum technical score in order to have its Bid considered.
- 20.1.4 Consultants may be hired in, but not limited to, any the following circumstances:
 - 20.1.4.1 the project requires special knowledge, skills, expertise, experience or available resources which the City does not possess in-house;
 - 20.1.4.2 another organization is partially or wholly funding the project and strict timelines have been placed on the funding; or,
 - 20.1.4.3 the nature of the project is such that it would not be in the public or City's interest to perform it in-house, as determined by the appropriate Director, in consultation with the CFO and the Director of Procurement.
- 20.1.5 Under this section, all Consultant proposals procured by RFP shall include, at a minimum:

- 20.1.5.1 a methodology and timetable to complete the project;
- 20.1.5.2 demonstrated experience and qualifications required to perform the project; and,
- 20.1.5.3 a list of personnel who will be directly involved in the completion of the project.
- 20.1.6 Proposals for Consulting Services shall be evaluated by a panel consisting of at least three (3) people, including a minimum of two (2) City staff members familiar with the project or the Services being acquired.
- 20.1.7 All of the members of the evaluation panel described in section 20.1.6 of this by-law must participate in the evaluation process and score the proposal.
- 20.1.8 The liaison Councillor may be invited to join the evaluation panel described in section 20.1.6 of this by-law but, if invited, the liaison Councillor shall comply with section 20.1.7 of this by-law.

21. ACCESS TO INFORMATION

- 21.1 Disclosure of any information provided to the City via a procurement process shall be made in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended.

22. SUSTAINABLE PROCUREMENT

- 22.1 All Departments, Divisions and Sections of the City are encouraged to consider the social and environmental impacts of their procurement of Goods and Services to balance fiscal responsibility with social and environmental values.

23. DISPOSAL OF SURPLUS PROPERTY

- 23.1 Any Surplus Property not required by departments that has a residual value, as determined by the appropriate Director, shall be sold or disposed of in accordance with one of the following methods, as jointly determined by the Director of Procurement and the appropriate Director:
 - 23.1.1 Call for Bid: If it is determined by the Director of Procurement and the appropriate Director that the highest return for Surplus Property is by a call for Bid, a Bid shall be issued;
 - 23.1.2 Public auction: If it is determined by the Director of Procurement and the appropriate Director that the highest return for Surplus Property is by public auction, the Procurement Division shall arrange for the Surplus Property to be sold at a public auction;
 - 23.1.3 Return to supplier: If it is determined by the Director of Procurement and the appropriate Director that a higher return net of disposal cost can be achieved by sale or trade-in of the Surplus Property to the original supplier or suppliers in that line of business, the appropriate Director shall sell or trade in such Surplus Property at the highest return;

- 23.1.4 In accordance with policy: If Council has established a policy in relation to the disposal of certain types of Surplus Property, then the provisions of that policy shall be followed by the Director of Procurement; or,
- 23.1.5 The Division may notify community interest, non-profit organizations or other levels of government of the relevant items for disposal and, request they submit to the appropriate Director, a letter of interest.
- 23.2 Any Surplus Property not required by departments and that has no residual value, as determined by the appropriate Director, shall be disposed of in accordance with one of the following methods, as determined by the Director of Procurement and appropriate Director:
 - 23.2.1 The Division may notify a single community interest, non-profit organization or other levels of government of the relevant items for disposal and request they submit, to the appropriate Director, a letter of interest;
 - 23.2.2 The Divisions may dispose of the items directly through the applicable waste process;
 - 23.2.3 Public auction: the Procurement Division shall offer the Surplus Property for sale through a public auction.
- 23.3 No staff member or Councillor of the City shall personally obtain any Surplus Property with a value of more than \$50.00 unless it is obtained through a public process.
 - 23.3.1 Notwithstanding section 23.3, a staff member or Councillor of the City may personally obtain Surplus Property at a price determined jointly by the Director of Procurement and the Director of Information Management & Technology Services, or his or her designate, without going through a public process if the property being obtained is information technology, such as a computer, laptop, or cell phone..

24. TIE BIDS

- 24.1 In the event that two (2) or more compliant, equal Bids are submitted during a competitive Bid process, the City shall determine the successful Bidder by drawing a Bidder's name from a receptacle or by flipping a coin, as determined by the Director of Procurement.

25. SUPPLEMENTARY POLICIES

- 25.1 Council may prescribe supplementary policies, not inconsistent with this by-law, relating to the purchasing procedures or policies of the City, as Council deems necessary or expedient.

26. NO LOBBYING

- 26.1 Unless authorized by the City to do so, no Bidder shall contact any member of Council or any City staff person to attempt to influence the award of a contract.

- 26.2 If a Bidder contacts any member of Council or any City staff person to attempt to influence the award of a contract, the Bidder shall be disqualified, unless the Bidder's actions have been authorized by the City.

27. DONATIONS

- 27.1 The City may accept Donations for Goods and Services, at Council's sole and absolute discretion.

28. SHORT TITLE

- 28.1 The short title of this by-law shall be the "Purchasing By-Law".

29. REPEAL

- 29.1 By-Law 2015-071 (Amended by By-Law No. 2016-068, December 12, 2016 and By-Law 2018-002, January 28, 2018) is hereby repealed.

30. ENACTMENT

- 30.1 This by-law shall come into force and effect upon the day of passing thereof.

ENACTED this 24th day of June, 2019.

Approval	Date	Print Name	Initials
Dept.			
Legal			
Finance			

(Original Signed by Mayor Dave Jaworsky)

D. Jaworsky, Mayor

(Original Signed by Olga Smith)

O. Smith, City Clerk

31. SCHEDULE "A"
PURCHASING EXEMPTIONS

This by-law does not apply to the following purchases:

1. Training and Education
 - Conferences, conventions, courses and seminars
 - External continuing education fees, workshops and seminars
 - Magazines, books, periodicals and subscriptions
 - Memberships, association fees or dues
2. Refundable Employees' Expenses
 - Advances (Cash)
 - Meal allowances
 - Taxi fare charges
 - Travel, hotel accommodations expenses
3. City's General Expenses
 - Bank charges
 - Charges to and from other government bodies
 - Collective agreements
 - Damage claims
 - Debenture payments
 - Election expenses including Electronic equipment and ballots (For greater certainty, the City Clerk is exempt from this by-law pursuant to the *Municipal Elections Act*, 1996, S.O. 1996, c. 32, Sched., as amended, in relation to election-related expenses).
 - Fees and charges payable to the Federal and Provincial Government
 - Insurance premiums
 - Licenses (vehicle, firearms, elevators, communications, etc.)
 - Postage
 - Property Rentals
 - Refunds
 - Tax remittances
 - Wages
4. Professional and Special Services
 - Actuarial services and expenses
 - Arbitrator services
 - Committee fees
 - Easements, encroachments and licenses
 - Electronic equipment and ballots for election purposes
 - Employee benefit premium payments
 - Honorariums
 - Insurance claims
 - Investments
 - Legal services
 - Medical, dental, laboratory and pharmacy fees
 - Mortgage/loan payments
 - Payments to local boards

- Payroll deduction remittances
 - Permits certificates acquired through Government agencies
 - Real estate fees or land transfer taxes
 - Real estate transactions, including buying, selling or leasing real property
 - Registry office fees
 - Research assignments
 - Revenue collected on behalf of a third party
 - Witness fees
5. Utilities (monthly charges)
 - Cable Television
 - Hydro
 - Natural Gas
 - Telephone (excluding cellular)
 - Water and Sewer
 6. Payments to educational institutions
 7. Payment to recreation program facilitators or hosts
 8. Events or engagements supporting local non-profit organizations
 9. Entertainers for theatre or special events
 10. Expenses related to an event which it is anticipated will be recovered in full from a third party
 11. Any purchases relating, either directly or indirectly, to a site plan agreement, a subdivision agreement or any other agreement or requirement that is specified in the *Planning Act*, R.S.O. 1990, c. P.13, as amended.
 12. Procurement of Goods intended for resale to the public.
 13. Procurement of Goods or Services on behalf of an entity not covered by this by-law.
 14. Procurements between enterprises that are controlled by or affiliated with the same enterprise or between one government body or enterprise and another government body or enterprise.
 15. Any forms of assistance such as grants, loans, equity infusions, guarantees and fiscal incentives.
 16. Non-legally binding agreements.
 17. Procurement of Goods or Services financed primarily from donations that require the procurement to be conducted in a manner inconsistent with this by-law.

32. SCHEDULE “B”

CHART OF BID IRREGULARITIES OR NON-COMPLIANCE

Notes:

- I) The following list of Bid Irregularities should not be considered exhaustive.
- II) This chart of Bid Irregularities shall apply only where an irregularity exists with respect to a stated requirement of a relevant competitive Bid document (e.g. a RFQ, RFT or RFP) or a RFI issued by the City.
- III) Where notice of a specified time-period to correct an irregularity has been given, or extended by the City and that time period, or extended time period, has elapsed without the correction having been made, the Bidder shall be deemed to be in default and, where applicable, the Bid deposit shall be forfeited. The Bid shall be given no further consideration for award.

ITEM	IRREGULARITY	RESPONSE
<u>GENERAL</u>		
1.	Bidder, at the time of submission, is not registered to carry on business in Ontario	Rejection.
2.	Late submissions.	Rejection. The submission will not be opened or read publicly. Submission to be returned to Bidder. Should it not be clear as to the Bidder's name and address then the package will be opened solely to access this information.
3.	Unsealed submission package.	Rejection unless, in the opinion of the Director of Procurement, the unsealed submission package did not result in missing information would adversely affect an award decision.
4.	Bidder has not been previously qualified under a related pre-qualification process, where applicable.	Rejection.
5.	Failure to have a representative in attendance and registered at a mandatory attendance site/information meeting.	Rejection.
6.	Submission not completed in a non-erasable medium or signed in ink.	Rejection.
7.	Failure to include the Form of Tender, Quotation, Proposal or Pre-Qualification, as may be applicable.	Rejection.
8.	Omission of a detail indicated to be mandatory.	Rejection.
9.	Forms that compose the submission documents are not completed in their entirety.	Rejection, unless, in the opinion of the Director of Procurement, the missing information is minor and would not adversely affect an award decision.
10.	Conditional Bids (Bids qualified, based on a Bidder's condition or restricted by an appended statement).	Rejection, unless, in the opinion of the Director of Procurement, the qualification or restriction is minor and would not adversely affect an award decision.
11.	Bids containing clerical errors that do not result in any ambiguity with respect to the overall submission or award decision, in the opinion of the Director of Procurement.	Two (2) business days to correct and initial.
12.	Un-initialed changes to the submission.	Two (2) business days to initial changes. The City reserves the right to waive the initialing requirement and accept the submission as corrected.

ITEM	IRREGULARITY	RESPONSE
13.	Signature missing on the Form of Tender, Quotation, Proposal or Pre-Qualification, as may be applicable.	Rejection.
14.	Failure to include required supplementary copies of the original at time of submission.	Two business days to submit.
15.	Failure to acknowledge addenda.	Rejection, unless, in the opinion of the Director of Procurement, the failure to acknowledge was an oversight and the contents of the addenda would not adversely affect an award decision.
16.	Any irregularity or non-compliance.	Despite the provisions herein contained, Council may waive any irregularity or non-compliance.
PRICING		
17.	Failure to include the schedule(s) of items & prices, price form or price details, as may be applicable, for inclusion with the submission.	Rejection, unless, in the opinion of the Director of Procurement, the missing information is minor and would not adversely affect an award decision.
18.	Pricing appears to be unbalanced to the extent that it may have a significant adverse effect to the City if awarded, in the opinion of the Director of Procurement.	Rejection.
BID DEPOSIT		
19.	Bid deposit or Bid Bond not submitted with Bid.	Rejection.
20.	Bid deposit or Bid Bond amount is insufficient by more than \$1.	Rejection.
21.	Surety provider's or Bidder's authorized signature missing from Bid Bond.	Rejection.
22.	Effective period of Bid Bond is less than the period set out in the Bid documents.	Rejection.
AGREEMENT TO BOND		
23.	Agreement to bond not submitted with Bid.	Rejection.
24.	Agreement to bond not in the form specified.	Rejection.
25.	Agreement to bond amount is insufficient by more than \$1.	Rejection.
26.	Surety provider's or Bidder's authorized signature missing from agreement to bond.	Rejection.
POST AWARD NOTIFICATION		
27.	Failure to execute required bonding or financial security within the prescribed time-period.	Rejection and Bid deposit forfeiture.
28.	Failure to execute a contract within the prescribed period.	Rejection and Bid deposit forfeiture.
29.	Failure to provide supporting documents, as specified within the Bid document and within the prescribed period.	Rejection and Bid deposit forfeiture.

33. SCHEDULE "C"

THRESHOLDS OF PROCUREMENT METHODS

Category	Estimated Purchase Value' (excluding tax)	Allowable Procurement Methods	Advertising Requirement
Low Cost Purchase (Purchasing Card, Negotiation or RFQ – facilitated by Division requiring Good and or Service)	Up to \$49,999	Limited Procurement undertaking by Division requiring Goods and / or Services Standing Arrangement Multi-Use List Open Competitive	Discretionary - Not Required
Goods and Services (RFQ, RFT, RFP, RFPQ – facilitated by Procurement Division)	\$50,000 Up to \$100,000	Limited Procurement facilitated by Procurement - competitive bids to be solicited from a minimum of 3 Bidders unless approval obtained from the Director of Procurement to solicit less than 3 bids. Standing Arrangement Multi-Use List Open Competitive	Limited Procurement – determined based upon number of invitees Standing Arrangement and Multi-Use List – as required pursuant to the arrangement Open Competitive – Advertising mandatory
	Over \$100,000	Open Competitive	Mandatory
Emergency Purchase	Any Value	Purchase to be carried out in accordance with the provisions of this by-law.	Not Required
Non Competitive Procurement	\$100,000 and over	Only permitted if approvals as set out in this by-law have been obtained	Not Required if approvals as set out in this by-law have been obtained

' **Estimated Purchase Value** is the factor that determines the appropriate procurement method. In determining the Estimated Purchase Value consideration must be given to the total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including (i) premiums, fees, commissions and interest; and (ii) the total value of renewals if the procurement provides for the possibility of renewals